



THOMAS J. MILLER
ATTORNEY GENERAL

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ADDRESS REPLY TO:
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November 28, 2005

Mr. Joe Royce, Legal Counsel
Administrative Rules Review Committee
State Capitol
L-O-C-A-L

Dear Joe:

Our office is in receipt of your letter of November 7, 2005, in which, on behalf of the Government Oversight Committee, you requested an opinion of the Attorney General concerning the award of a contract by the Department of Natural Resources following competitive bidding for the position of Inspection Program Coordinator for the administration of the Permanently Moored Vessel (PMV) Inspection Program. You ask us to determine whether there was a conflict of interest by the successful bidder who participated in creation of an inspection manual relevant to the inspection process and in the rulemaking for the administrative rules under the PMV program. Further, you pose questions that ask us to assess the extent to which a government agency may rely on factors other than price in the bidding process and to assess the weight that should be given to Iowa bidders.

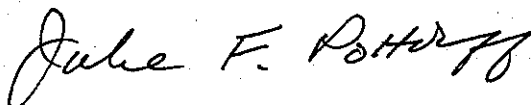
Unfortunately, we are unable to resolve these issues through the opinion process. The opinion process is designed to address legal issues that can be resolved through legal research. We do not utilize opinions when a "question calls for resolution of a question of fact or policy rather than determination of a question of law, or the legal question is dependent upon the facts of specific cases." 61 Iowa Admin. Code 1.5(3)(c). In this circumstance, the opinion process does not accommodate an investigation of the facts that would be necessary to determine whether a conflict of interest existed. Further, an assessment of factors other than price, including the weight to be accorded to Iowa bidders, presents policy issues that cannot be resolved through legal research.

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Your concerns may be addressed through other procedures. An unsuccessful bidder who believes a conflict of interest tainted the bidding process may raise this issue through any available administrative procedures and, ultimately, in district court. See Medco Behavioral Care Corp. of Iowa v. State Dept. of Human Services, 553 N.W.2d 556, 561 (Iowa 1996). This procedure allows for the litigation of the facts on which any conflict of interest must be determined.

Policy concerns about the weight state agencies place on various factors in the bidding process may be addressed directly with the agency. From the materials attached to your request, we see that personnel in the Department of Natural Resources and in the Department of Administrative Services have submitted information about the bidding process for the Committee's consideration. Further discussion with these individuals may be helpful to the Committee.

Sincerely,

A handwritten signature in cursive script, reading "Julie F. Pottorff".

JULIE F. POTTORFF
Deputy Attorney General